

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 80 OF 2003

Dnyaneshwar Yashwant Lokhande
R/p Village Madsanghavi,
Tal. District Nasik

..Applicant

V/s

The State of Maharashtra

..Respondent.

Mr. S.B.Shetye, Advocate for the applicant.

Mr. Y.S. Shinde, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 2ND MARCH, 2007.

ORAL JUDGMENT

. Heard Mr. Shetye. the learned Counsel for the applicant and Mr. Shinde, learned A.P.P. for the State. Perused the record and proceeding.

2. By the present revision application, the applicant, who is accused No.1, seeks to challenge the order of conviction and sentence for the offence punishable under section 307, to undergo sentence of R.I. for 7 years and to pay fine of Rs. 1000/- and in default to pay fine to undergo R.I. for 3 months.

3. The prosecution case, in brief, is that the present applicant was married to one Manisha Alias Sunita about 5 years prior to the incident. The incident occurred in the evening of 30th December, 2001. The applicant was observing fast every day for a period of about 7 days, as some religious function i.e. Parayan was going on. At about 8 P.M., on 30th December, 2001 he returned home. His wife had prepared groundnut kalvan and Bhagar. The applicant was annoyed with the preparation, as well as delay in making the preparation. His wife tried to pacify him but the applicant got annoyed and scolded her saying that " It is now enough and she must get thrashing". Saying so, he assaulted her and also caught hold her head and dashed it against the kitchen platform due to which she suffered some bleeding injury. At the same time, in anger the present applicant also poured kerosene from the kerosene lamp on her person and set her ablaze with match stick. She shouted but nobody came to her. She was wearing nylon saree. She herself poured water and extinguished fire. Within a short time, her maternal aunt Jijabai came there and Manisha narrated the incident to her. As advised by Jijabai the present

applicant and his mother took his wife to hospital, where she was examined and treated. At hospital her statement was recorded, wherein she stated above facts and also that she was being harassed and treated with cruelty by her husband and mother in law. In view of this, the present applicant and his mother accused No.2 were prosecuted and tried for the offence punishable under section 498A, 323, 307, 504 r/w section 34 of Indian Penal Code. After trial mother was acquitted of all the charges. The present applicant was also acquitted of the charges under section 498A, 504 IPC but was convicted for the offence punishable under section 307, 323 IPC and was sentenced as stated above. Separate sentence for the offence under section 323 IPC was not awarded.

4. The present applicant had preferred Criminal Appeal No. 42/2002 challenging the conviction and sentence. However, the learned Sessions Judge, Nasik, was pleased to dismissed the appeal. Hence the applicant is before this Court in revision petition.

5. The learned Counsel for the applicant-accused fairly made a statement at the out set that on merits

there is no material to challenge the conviction. However, he prays for leniency, as far as sentence is concerned. The learned Counsel relying on the facts

stated above, contended that the allegations about the cruel treatment to the wife were not proved. The incident had occurred abruptly, particularly because the applicant was observing fast for about one week and as on that day there was some delay in making food and possibly due to anger he lost his temper and assaulted his wife and in that anger he also poured kerosene on her and set ablaze. According to him, it was not pre-meditated and pre-planned on the part of the applicant. He has been in jail for almost 5 years and therefore, the sentence may be reduced to the imprisonment as already undergone. He is willing to pay the fine amounts. Mr. Shinde the learned APP did not seriously oppose the prayer made by the learned Counsel for the applicant.

6. The record reveals that the whole incident occurred abruptly because the applicant had lost control of his mind possibly due to hunger and therefore, he

assaulted his wife and set her ablaze. Fortunately, by timely action of his wife herself, fire was extinguished and she survived. The circumstance in which the incident occurred clearly reveal that the applicant had not made up his mind to kill his wife but only in the heat of anger, may be due to his own fault, he resorted to this action. He has been sentenced to undergo R.I. for 7 years and as per the report received from jail upto 28th February, 2007 he has actually undergone sentences of imprisonment for 4 years, 8 months and 8 days. To this remission of one year and 10 days is to be added. Thus he has completed the sentence of 5 years, 10 months and 18 days till 28th February, 2007. On instructions learned A.P.P. informs that out of the remaining period of about 13 months and 10 days the applicant may be entitled to a remission of about 3 months and some days. It means that if the sentence is not reduced he will be entitled to be released after about 10 months. Taking into the circumstances in which the incident occurred, In my opinion, the sentence which he has already undergone is quit sufficient to meet the ends of justice and therefore, to the extent of sentence the revision may be allowed.

7. The Revision Application is partly allowed to the extent of sentence. While the conviction is hereby maintained, the sentence of imprisonment is reduced to the period as already undergone by the applicant. The learned Counsel for the applicant makes a statement that the applicant shall immediately deposit the fine amount before the trial Court. The applicant be released forthwith, if not required in any other case.

(J.H. BHATIA, J.)